

United States
Circuit Court of Appeals
For the Ninth Circuit.

UNITED STATES OF AMERICA,
Appellant,
vs.
ASH SHEEP COMPANY, a Corporation,
Appellee.

Transcript of Record.

Upon Appeal from the United States District Court
for the District of Montana.

Filed

AUG 28 1914

F. D. Monckton,
Clerk.

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Circuit Court of Appeals
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INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

	Page
Answer	11
Assignment of Errors.....	26
Attorneys of Record, Names and Addresses of..	1
Bill of Complaint	2
Citation on Appeal (Original).....	29
Clerk's Certificate to Transcript of Record....	32
Decree	23
Names and Addresses of Attorneys of Record..	1
Opinion	15
Order Directing Entry of Decree.....	22
Petition for and Order Allowing Appeal.....	25
Praeipce for Transcript of Record.....	31
Subpoena	9

Names and Addresses of Attorneys of Record.

BURTON K. WHEELER, Esq., United States
Attorney, Butte, Montana.

Solicitor for Complainant and Appellant.

C. B. NOLAN, Esq., and WILLIAM SCALLON,
Esq., Helena, Montana,

Solicitors for Defendant and Appellee.

*In the District Court of the United States, in and for
the District of Montana.*

IN EQUITY—No. 11.

UNITED STATES OF AMERICA,

Complainant,

vs.

ASH SHEEP COMPANY, a Corporation,

Defendant.

BE IT REMEMBERED, that on the 11th day of
August, 1913, complainant filed its bill of complaint
herein, being in the words and figures following, to
wit: [1*]

*In the District Court of the United States, District
of Montana.*

UNITED STATES OF AMERICA,

Complainant,

vs.

ASH SHEEP COMPANY, a Corporation,

Defendant.

*Page number appearing at foot of page of original certified Record.

Bill of Complaint.

To the Judge of the District Court of the United States, District of Montana:

The United States of America, by James W. Freeman, United States Attorney for the District of Montana, under authority and by the direction of the Attorney General, brings this bill of complaint against the Ash Sheep Company, a corporation organized and existing under and by virtue of the laws of the State of Montana, and by reason thereof a citizen and resident of said State and District of Montana; and thereupon shows unto your Honor:

1. That the said defendant, the Ash Sheep Company, at all the times hereinafter mentioned, has been and now is a corporation organized and existing under and by virtue of the laws of the State of Montana, with its principal place of business at Billings, Montana, and as such corporation has been and now is engaged in the buying and selling of sheep and other livestock in the State and District of Montana, and carrying on and conducting all such business and operations as are necessarily incident to the buying and selling of sheep in the State and District of Montana.

2. That on or about the 12th day of August, 1868, this complainant and the Crow tribe of Indians entered into, concluded and then and there was promulgated a treaty by which the United States of America set aside for the use and benefit of the [2] said Crow tribe of Indians that certain reservation within the State and District of Montana, which has

since been and now is known as the Crow Indian Reservation.

3. That during all of the times hereinafter mentioned this complainant was and now is the owner and lawfully entitled to the possession of all those certain tracts of land situate, lying and being within the original boundaries of the Crow Indian Reservation and a part thereof, in the State and District of Montana, and described as follows: Section twenty-seven (27), township two (2) north, range thirty-six (36) east; section twelve (12), township one (1) north, range thirty-six (36) east; sections six (6) and seven (7), township four (4) north, range thirty-six (36) east of Montana principal meridian. That all of said lands are reserved lands and a part of the lands reserved and set aside by the said United States for the use and benefit of the said tribe of Crow Indians, in said State and District of Montana.

4. That the lands hereinabove described are a part of the vacant ceded Indian lands of the said Crow tribe of Indians and that the Indian title to the same has not been extinguished and that said lands are subject to the rules and regulations made and promulgated by the Secretary of the Interior of the United States concerning Indian lands that have been opened for settlement and entry, dated November 27, 1911, and the Act of Congress of the United States approved April 27th, 1904 (33 Statutes at Large, page 352), entitled "An Act to ratify and amend an agreement with the Indians of Crow Indian Reservation in Montana, and making appropriation to carry the same into effect.

5. That on or about the 14th day of July, 1913, the exact date thereof being now unknown to complainant and for that reason [3] not more definitely alleged, and ever since said date, this defendant, the Ash Sheep Company, in violation of the rules and regulations of the Secretary of the Interior of the United States and said Act of Congress aforesaid, grazed and caused to be grazed upon the tracts of land hereinabove described, and other vacant ceded Indian lands reserved for the use and benefit of said Indians, and subject to the rules and regulations and Act of Congress hereinabove referred to, a more particular description of said lands is now to complainant unknown, a large number of sheep, to wit, about seven thousand one hundred (7,100) head; that the said sheep are being grazed, and are now trespassing in and upon the respective tracts of land hereinabove described; that the defendant company, acting by and through its agents, servants and employees, has not obtained authority or any permit whatsoever to graze and cause to be grazed said sheep in and upon the land hereinabove specifically described, as provided by the rules and regulations of the Department of the Interior of the United States, or any other officials of the complainant thereunto duly authorized.

6. And complainant further avers that grazing permits have been duly and regularly issued by its duly authorized agents to certain persons authorizing and permitting said persons to graze their stock, to wit, horses and cattle, upon all of the lands hereinabove described; that said persons to whom permits

have been issued have complied with all the rules and regulations made and promulgated by the Secretary of the Interior in that regard and have paid all fees required thereunder.

7. Complainant further avers that the said defendant, the Ash Sheep Company, acting through its officers, agents, servants and employees, are now grazing and will continue to graze said seven thousand one hundred head of sheep in and upon the lands hereinabove referred to unless restrained by this court; that [4] such action on the part of the said defendant company and its agents, servants and employees constitutes a continuing trespass and will materially injure and destroy the use and value of said lands and cause irreparable damage to this complainant, and deprive the Crow Indians of the benefits thereof; and that unless restrained by this Honorable Court the defendant, in defiance of the express mandate of the law so enacted by the Congress of the United States, will continue to graze said seven thousand one hundred head of sheep without due and lawful authority therefor first had and obtained, and said defendant now claims to have the right to so maintain said sheep in and upon said lands so held by the United States of America for the use and benefit of the Crow Indian nation, and will thereby prevent and prohibit the United States from asserting any right whatsoever in said lands.

8. That the said defendant, the Ash Sheep Company, in all of its operations hereinbefore described, has been and will act through divers of its officers, agents and employees; that the names of said officers,

agents, servants and employees are to this complainant unknown and for that reason they are not made parties to this cause in their own individual names. Complainant avers, however, that unless such officers, agents, servants and employees of the said defendant are likewise restrained by an order of this Court, they will continue to trespass upon said lands, as aforesaid, and this complainant will, when the names of said officers, agents, servants and employees shall be ascertained, ask this Honorable Court permission to enjoin said officers, agents, servants and employees as party defendants in this cause. That in consequence of the said acts of defendant company, complainant and the said Crow Indians herein have been and are being deprived of the benefit of said lands and premises, and complainant alleges that by reason thereof [5] the said Crow Indians and this complainant as hereinbefore set forth have sustained damages in the sum of seven thousand one hundred dollars (\$7,100).

All of which actions, doings and pretenses of the said defendant and its said officers, agents, servants and employees are contrary to equity and good conscience and tend to the manifest injury and oppression of complainant in the premises.

WHEREFORE, forasmuch as complainant is remediless in the premises according to the strict rule of common law, and can only have relief in a court of equity, where matters of this nature are properly cognizable and relievable;

To the end, therefore, that said defendant, the Ash Sheep Company, may full, true, direct and perfect

answer make to all and singular the matters and things hereinbefore stated and charged, but not on oath (its answer on oath being hereby expressly waived), as fully and particularly as if the same were here repeated and it thereunto distinctly interrogated; that the said defendant, the Ash Sheep Company and its officers, agents, servants and employees, during the progress of this cause and thereafter finally and perpetually may be enjoined from so grazing said seven thousand one hundred head of sheep on and upon said lands so described, and from occupying, using and trespassing on and upon said lands without having first obtained due and proper permission or authority from the Secretary of the Interior of the United States of America, and that the said defendant, its officers, and agents, be enjoined from employing or contracting with any individual, individuals, corporation or corporations not connected with or in the employ of said defendant from continuing the trespass hereinabove complained of, and from entering upon or going on the said lands, and that the said complainant may have and recover from said defendant the sum of seven thousand one hundred dollars (\$7,100) damages; and [6] that the said complainant may have such other and further relief in the premises as may be considered just in this Honorable Court and agreeable to equity and good conscience.

May it please your Honor to grant unto this complainant a writ of subpoena of the United States of America, issued by and under the seal of this Honorable Court directed to the said defendant, the Ash

Sheep Company, thereby commanding it at a certain time and under a certain penalty therein to be limited to appear before this Honorable Court and then and there full, true and direct answer make to all and singular the premises, and to stand to, perform and abide by such order, direction and decree as may be made against it in the premises, as shall seem fit and meet and agreeable to equity.

JAMES W. FREEMAN,
United States Attorney,
District of Montana. [7]

United States of America,
District of Montana,—ss.

James W. Freeman, being first duly sworn, deposes and says: That he is the duly appointed, qualified and acting United States Attorney for the district of Montana; that he has read the foregoing bill of complaint and knows the contents thereof, and that the matters and things therein contained are true to the best of his knowledge, information and belief.

JAMES W. FREEMAN.

Subscribed and sworn to before me this 11th day of August, A. D. 1913.

[Seal]

GEO. W. SPROULE,
Clerk.

[Indorsed]: Title of Court and Cause. Bill of Complaint. Filed Aug. 11, 1913. Geo. W. Sproule, Clerk. [8]

Thereafter, on August 11, 1913, a subpoena in equity was duly issued herein, being in the words and figures following, to wit: [9]

Subpoena.

UNITED STATES OF AMERICA.

*District Court of the United States, District of
Montana.*

IN EQUITY.

The President of the United States of America,
Greeting: To Ash Sheep Company, a Corpora-
tion, Defendant.

You are hereby commanded, that you be and ap-
pear in said District Court of the United States
aforesaid, at the courtroom in Federal Building,
Helena, Montana, on the 1st day of September, 1913,
to answer a Bill of Complaint exhibited against you
in said court by The United States of America, Com-
plainant, and to do and receive what the said Court
shall have considered in that behalf. And this you
are not to omit, under the penalty of Five Thousand
Dollars.

WITNESS, the Honorable GEO. M. BOUR-
QUIN, Judge of the District Court of the United
States for the District of Montana, this 11th day of
August, in the year of our Lord one thousand nine
hundred and thirteen and of our Independence the
138.

[Seal]

GEO. W. SPROULE,
Clerk.

By _____,
Deputy Clerk.

MEMORANDUM PURSUANT TO RULE 12,
SUPREME COURT U. S.

You are hereby required, to file your answer or other defense in the clerk's office of said court on or before the twentieth day after service, excluding the day thereof; otherwise the bill may be taken *pro confesso*.

[Seal]

GEO. W. SPROULE,
Clerk.By _____,
Deputy Clerk.JAS. W. FREEMAN,
U. S. Atty.,
Solicitor for Complainant,
Helena, Montana. [10]United States Marshal's Office,
District of Montana.

I hereby certify, that I received the within writ on the 11th day of August, 1913, and personally served the same on the 12th day of August, 1913, by delivering to, and leaving with Ash Sheep Company, a corporation, by Christ Yegen, President of said corporation, said defendant named therein personally at Billings, in the County of Yellowstone, in said district, a copy thereof with him, together with a true copy of affidavit of J. W. Freeman, U. S. Attorney, motion for preliminary injunction, motion for restraining order and bill of complaint in said cause.

Helena, August 12th, 1913.

WILLIAM LINDSAY,
U. S. Marshal.
By Charles Morgan,
Deputy.

[Endorsed]: No. 11. U. S. District Court, District of Montana. In Equity. United States vs. Ash Sheep Co. Subpoena. Filed Aug. 20th, 1913. Geo. W. Sproule, Clerk. By C. R. Garlow, Deputy Clerk. [11]

Thereafter, on Aug. 25, 1913, Answer was duly filed herein, being in the words and figures following, to wit:

In the District Court of the United States, District of Montana.

UNITED STATES OF AMERICA,

Complainant,

vs.

ASH SHEEP COMPANY,

Defendant.

Answer.

Now comes the defendant and for answer to complainant's bill of complaint:

I.

Admits the allegations of paragraphs one and two.

II.

Admits the allegations of paragraph three, except that it denies that the lands referred to in said paragraph are reserve lands, and denies that the said lands are set aside by the United States for the use and benefit of the Crow Indians. In that connection, it alleges that the lands in question were ceded to the United States by the said tribe, and that said lands are a portion of the public domain of the United States; the said tribe having no claim thereto, except

that the proceeds from the disposition of said lands, to the extent provided for in the treaty and act of Congress providing for their cession shall be turned over to said tribe.

III.

Answering the allegations of paragraph four, admits that the lands referred to in said paragraph were part of the said Indian [12] lands, but denies that the Indian title has not been extinguished, and denies that the said lands are subject to the rules and regulations made and promulgated by the Secretary of the Interior, in so far as the rules and regulations referred to provide that permits to said lands shall be granted for rentals provided, and the rentals so provided turned over to the Crow Indians. In that connection defendant alleges that said lands are public lands of the United States and that the Indian title to same has been extinguished.

IV.

Answering the allegations of paragraph five, admits that sheep belonging to defendant, to the number specified in the bill of complaint, graze on the tracts of land described, but denies that the lands upon which they graze were reserved for the use and benefit of the Indians, and denies that the use of said lands is subject to the rules and regulations of the Indian Department, and denies that so grazing any trespass was committed.

Admits, however, that no permit to graze said sheep on said land, pursuant to the rules and regulations of the Interior Department was obtained. In that connection, however, defendant alleges that the

lands in question were public lands of the United States, and that pursuant to the policy of the Government of the United States, as to the free use of public lands for grazing and pasturage purposes, defendant a citizen of the United States, owning the sheep in question, asserted its right under that privilege and policy, and grazed its sheep on said lands.

V.

Answering the allegations of paragraph six, defendant has no knowledge or information sufficient to form a belief. [13]

VI.

Answering the allegations of paragraph seven, admits that it is grazing its sheep, and will continue so to do on said land, unless restrained from doing so.

Denies that its doing so is a trespass, and denies that the grazing of said sheep will materially or at all destroy the value of said lands.

Denies that its grazing said sheep in the manner herein set forth is in violation of the law, and admits that it claims to have the right to graze said sheep upon the said lands.

Denies that its grazing its sheep on said lands is in violation of any right of ownership in the United States of America, and, in that connection, avers that its grazing its sheep on said lands is in accordance with the express wish and policy of the Government of the United States, as to the use of public lands, including the land in question.

VII.

Answering the allegations of paragraph eight, admits that it will continue to use said land for graz-

ing purposes, unless restrained from so doing, and admits that its officers and agents, in the handling of said sheep will likewise do so, unless restrained.

Denies that in consequence of the acts of defendant, complainant or the Crow Indians have been deprived of the benefit of said lands, and denies that by reason of the acts charged, or of any other acts, the Crow Indians and the complainant, or either of them, have or will sustain damage in the sum of seven thousand one hundred dollars, or any other sum or amount.

Denies that the acts charged in the complaint are contrary to equity and good conscience, or either, or tend to the manifest injury of the complainant. [14]

Further replying to said paragraph, denies that complainant is without remedy at law, and denies that relief is obtainable only in equity.

Further answering said bill of complaint, defendant alleges that in the bill of complaint there are set forth two causes of action which cannot be joined, to wit, a cause of action in equity asking for injunctive relief on account of trespasses alleged to have been committed, and a cause of action for the enforcement of a penalty, pursuant to the provisions of Section 2117 of the Revised Statutes of the United States, and that by reason thereof in the bill of complaint in question there is a misjoinder of causes of action.

Further answering said complaint and that portion of same where damages are sought for the sum of seven thousand one hundred dollars, defendant avers that the claim for damages in question is made pursuant to the provisions of Section 2117 of the

Revised Statutes of the United States, and as such, is a claim based on the enforcement of a penalty, and as such, is a claim that cannot be enforced in equity.

WHEREFORE, having answered complainant's bill of complaint, defendant prays that complainant's bill be dismissed, and that it be awarded its costs in this behalf expended.

C. B. NOLAN,
WM. SCALLON,
Solicitors for Defendant.

Due personal service of within Answer made and admitted and copy received this 25th day of August, 1913.

J. W. FREEMAN,
Solicitor for Complainant.

[Indorsed]: Title of Court and Cause. Answer.
Filed Aug. 25, 1913. Geo. W. Sproule, Clerk. [15]

That on the 19th day of August, 1913, the Memorandum Decision of the Court was duly filed herein, being in the words and figures following, to wit:
[16]

[Opinion.]

United States District Court, Montana.

UNITED STATES

vs.

ASH SHEEP CO.

Herein, the order to show cause is vacated (and thereby the temporary restraining order is discharged).

Aug. 19, 1913.

BOURQUIN, J.

MEMO.

The Court will later extend its reasons. Briefly, they are that the Departments have no authority in the matter of public lands save to the extent conferred by Congress; that the Indian title to the lands involved, which was one of only occupancy and use, has been extinguished, the trust declared by the statute being but to the proceeds of sale of said lands; that Congress incorporated the lands in the general mass of public lands, directing they be opened to settlement and sale; that this confers no authority to lease or grant exclusive grazing privileges; that to lease or grant such exclusive privileges is counter to the implied license to general grazing, the policy of the Government for more than 100 years; that to set aside this policy and establish a new policy of exclusive lease or permit will not be implied where not necessary, and to accomplish it requires congressional sanction; that until said lands are settled upon or sold, they are open to general grazing, and exclusive permits to graze said lands are without authority and legal sanction, and are void. [17]

United States District Court, District of Montana.

UNITED STATES

vs.

ASH SHEEP COMPANY.

By agreement, ratified by Congress, the Crow Indians ceded a part of their reservation in Montana to the United States. The granting clause is that "The said Indians....do hereby cede, grant and relinquish to the United States all right, title and interest which they may have to the lands" therein described. The agreement provided for a definite and unconditional money consideration. This latter was modified in the ratifying Act, to the effect that in consideration of the cession, the United States agreed to dispose of said lands at not less than \$4.00 per acre and pay the proceeds to said Indians. The Act further provided that all said lands were subject to withdrawal and disposition under the Reclamation Act so far as feasible, and those not so withdrawn "shall be disposed of under the homestead, townsite and mineral-land laws....and shall be opened to settlement and entry by proclamation of the President"; that when in the judgment of the President no more of said lands "can be disposed of at said price....he may....sell from time to time the remaining land subject to the provisions of the homestead law or otherwise as he may deem most advantageous, at such price or prices, in such manner, upon such conditions, with such restrictions, and upon such terms as he may deem best for all the interests concerned"; that the United States was not bound to

purchase any said land or to dispose thereof except as in the Act provided, or to guarantee to find purchasers, "it being the intention of this Act that the United States shall act as trustee for said Indians to dispose of said lands and to expend and pay over the proceeds received from the sale thereof only as received."

Act April 27, 1904.

Said lands were opened to general settlement and entry by the President's proclamation of May 24, 1906. Much thereof has been disposed of, some by sale by virtue of the aforesaid power given [18] the President, and upon the remaining land and for the benefit of the Indians aforesaid the Bureau of Indian Affairs with the sanction of the Secretary of the Interior assumes to grant exclusive grazing privileges for a price.

Regulations have been prescribed by them providing that with the written consent of the superintendent of the reservation the licensee may fence and otherwise improve the lands; that the license may be revoked in the discretion of the Secretary of the Interior and is revoked *pro tanto* by any *bona fide* settlement upon sale or entry of any said lands, with proportionate refund of the consideration paid by the licensee; that upon expiration of the license all improvements placed upon the lands shall remain thereon and become the property of the equitable owner of the land; and that said superintendent must prevent trespasses upon said lands and prosecute trespassers.

This is a suit to enjoin defendant from trespassing

and grazing upon said lands without a permit and upon which permits have issued to others.

An order to show cause issued and a temporary restraining order accompanied it. It now appears that on May 14, 1913, a permit as aforesaid issued to a cattle company to graze a maximum number of cattle upon all such unsold and unentered lands in about eighteen townships and estimated to be 204,000 acres, for one year and renewable for four years, the consideration being \$15,300 yearly, the Secretary of the Interior reserving the right to issue to residents on or adjacent to said lands permits to also graze a limited number of cattle thereon during the same time and at the same rate, "provided that such permittees pay a proportionate share of the actual cost of water development and provided that permittees of this permit have not their full amount of cattle on the range, the consideration of any such permits to be deducted from the consideration mentioned in this permit."

The contention for complainant is that the lands involved are yet so far Indian lands, that the Indians are entitled to the use and benefit thereof until the lands are finally sold, and that in the meantime to the Indians use and benefit the Interior Department has authority to issue exclusive grazing permits as aforesaid for a consideration.

The defendant maintains that such permits would impede settlement [19] and sale of the lands and are contrary to the intent of Congress.

The Court is of the opinion that the Interior Department has not the power claimed. The Indians'

“right, title and interest” in the lands involved were at the time of the aforesaid agreement, of occupancy and use only, the fee being in the United States. They relinquished all thereof to the United States and the latter accepted the same. The purpose was to effectuate the policy of breaking up tribal relations, of settling the Indians upon separate tracts of individual ownership in fee, and of disposing of surplus lands to others for a consideration for the benefit of the Indians and ultimately to the benefit of the community and nation.

By this the Indian title to the lands was extinguished and thereafter they were no longer Indian country. The lands were to be disposed of under the general public land laws in the main, and not to revert to the Indians under any circumstances. Thereupon the lands were or became wholly territory and property of the United States, full dominion over which is by the Constitution vested in Congress, to be disposed of as the latter willed. By the Act aforesaid, Congress incorporated the lands in the general mass of public lands, subject to all the incidents of the latter, and to be likewise disposed of as aforesaid. In so far as said Act creates a trust, it would seem that it is merely precautionary, not intended to enlarge the Indians’ right, title or interest in the lands nor to create a reversion therein, but attaching to only the proceeds of sales of the lands.

The President and the Interior Department are the instruments to execute the will of Congress in the disposition of public lands. They have no authority

and power therein save that derived from some act of Congress.

The Act here involved confers upon them authority and power to sell the lands, but neither expressly nor by implication does it empower them to prescribe grazing regulations in respect to said lands and to issue exclusive licenses thereon for a consideration or at all. Even if a trust attaches to the lands, a trust to sell gives no power to lease. It can be nothing but a qualified trust, the lands approximating public lands in general and with all the incidents of the latter, including the hereinafter mentioned implied license of common grazing. And any trust herein is to the Government as trustee, not to the Interior Department. The policy of the Government from its foundation has been to permit free and unrestrained grazing of the public lands. It impliedly [20] licenses all comers to enjoy this privilege. The benefits of this policy are many and compensatory. It promotes settlement and disposition of the public lands. It aids the settler, to whom the Government's policy has always been liberal, to establish himself. It increases and cheapens the country's supply of meats. See *Buford vs. Houtz*, 133 U. S. 326. The Act involved indicates no purpose to reverse this policy or to revoke this license, and it will not be implied. In fact, Congress has steadily refused to authorize leases of the public lands, though on occasion, by express enactment, has authorized the Interior Department to lease certain Indian lands. Furthermore, the aforesaid regulations and licenses of the Interior Department tend to impede settlement

and sale of the lands and thus to defeat the intent of Congress.

True, the lands subject to the license are still open to settlement and sale, but the average settler would hesitate to invade the domain or enclosure of a corporation or other licensee. He would fear, with or without reason. And settling therein he would place himself where all grazing privileges were denied him. Other reasons are obvious. It is believed that the Interior Department in the matter of the aforesaid grazing permits is without the sanction of Congress.

Upon the whole, the Court is persuaded that the defendant is not a trespasser upon the lands involved and that it can lawfully enter upon and graze thereon. It follows that the order to show cause should be and is vacated.

August 19, 1913.

GEO. M. BOURQUIN,
Judge.

Filed Aug. 19, 1913. Geo. W. Sproule, Clerk.
[21]

Thereafter, on December 16th, 1913, order for decree was filed and entered herein, being in the words and figures following, to wit:

[Order Directing Entry of Decree.]

United States District Court, Montana.

UNITED STATES

vs.

ASH SHEEP CO.

Herein, for reasons set out in its order denying a preliminary injunction, the Court holds complainant has no cause of action and a decree will be entered for defendant, dismissing the suit.

Dec. 16th, 1913.

BOURQUIN, J.

Filed and entered Dec. 16th, 1913. Geo. W. Sproule, Clerk. [22]

Thereafter, on December 26, 1913, a Decree was duly filed and entered herein, being in the words and figures following, to wit:

In the District Court of the United States, District of Montana.

UNITED STATES OF AMERICA,

Complainant,

vs.

ASH SHEEP COMPANY, a Corporation,

Defendant.

Decree.

This cause came on for final hearing before the Court on the 17th day of December, 1913, upon the bill of complaint and the answer, and was argued by counsel, and thereupon, upon consideration thereof, in accordance with the reasons set out by the court in its decision filed herein on August 19, 1913, vacating the order to show cause and discharging the temporary restraining order previously issued, wherein it was held by the Court that the Indian title to the lands involved in this controversy, to wit:

“Section twenty-seven (27), township two (2) north, range thirty-six (36) east; section twelve (12), township one (1) north, range thirty-six (36) east; sections six (6) and seven (7), township four (4) north, range thirty-six (36) east of Montana Principal Meridian.”

has been extinguished, and that Congress has incorporated the said land in the general mass of public lands, to be opened to settlement and sale, and that exclusive permits to graze said land are void, and without legal authority and legal sanction, it is

ORDERED, ADJUDGED and DECREED as follows, viz.:

That complainant's bill of complaint herein be, and the same hereby is, dismissed.

Dated December 26, 1913.

GEO. M. BOURQUIN,

Judge.

[Indorsed]: Title of Court and Cause. Decree. Filed and Entered December 26, 1913. Geo. W. Sproule, Clerk. [23]

Whereupon, said pleadings, process and final decree are entered of final record herein in accordance with the law and the practice of this court.

Witness my hand and the seal of said court at Helena, Montana, this 26th day of December, A. D. 1913.

[Seal]

GEO. W. SPROULE,

Clerk.

By C. R. Garlow,
Deputy Clerk.

[Indorsed]: Title of Court and Cause. Final Record. Filed and Entered December 26, 1913. Geo. W. Sproule, Clerk. By C. R. Garlow, Deputy.
[24]

Thereafter, on May 20, 1914, Petition for Appeal and Order Allowing same were duly filed and entered herein, in the words and figures following, to wit:
[25]

[Petition for and Order Allowing Appeal.]

*In the District Court of the United States, District
of Montana.*

IN EQUITY—No. 11.

UNITED STATES OF AMERICA,

Complainant,

vs.

ASH SHEEP COMPANY, a Corporation,

Defendant.

APPEAL AND ALLOWANCE.

The above-named complainant, the United States, conceiving itself to be aggrieved by the decree made and entered herein on the 26th day of December, A. D. 1913, in the above-entitled proceedings, does hereby appeal from said decree to the United States Circuit Court of Appeals, for the Ninth Circuit, for the reasons specified in the assignment of errors which is filed herewith, and prays that its appeal be allowed and that a citation issue as provided by law, and that a transcript of the records, proceedings and papers upon which said decree was based,

duly authenticated, may be sent to the said United States Circuit Court of Appeals for the Ninth Circuit, sitting at the city of San Francisco, in the State and Northern District of California.

BURTON K. WHEELER,
Solicitor for Complainant.

The foregoing petition is hereby granted and an appeal is allowed.

Dated this 20 day of May, 1914.

GEO. M. BOURQUIN,
Judge.

Filed and entered May 20, 1914. Geo. W. Sproule,
Clerk. [26]

Thereafter, on May 20, 1914, an Assignment of Errors was duly filed herein, in the words and figures following, to wit: [27]

*In the District Court of the United States, District
of Montana.*

IN EQUITY—No. 11.

UNITED STATES OF AMERICA,
Complainant,

vs.

ASH SHEEP COMPANY, a Corporation,
Defendant.

Assignment of Errors.

And now, on this 20th day of May, A. D. 1914, came complainant, United States of America, by its solicitor, Burton K. Wheeler, United States Attorney for the district of Montana, and says that the decree

made and entered in the above cause on the 26th day of December, A. D. 1913, is erroneous and unjust to said complainant:

FIRST: Because the Court erred in finding that the Indian title to the lands described in the said decree and involved in the above-entitled action had been extinguished.

SECOND: Because the Court erred in finding that Congress had incorporated the said lands in the general mass of public lands to be opened to settlement and sale, in pursuance to the general land laws of the United States of America, by persons qualified to settle upon or purchase said lands.

THIRD: Because the Court erred in finding that exclusive permits to graze said lands are void and without authority and legal sanction.

FOURTH: Because the Court erred in finding that the Commission of Indian Affairs had no authority to exercise control over said lands and issue grazing permits for the use of the same. [28]

FIFTH: Because the Court erred in refusing to find that said lands are lands in which the Crow tribe of Indians are interested and entitled to the use and benefit thereof until such lands are finally sold or disposed of in pursuance with the agreement of said Crow tribe of Indians as modified by the Act of Congress of April 27, 1904, ratifying the said agreement, by which said Crow tribe of Indians agreed to sell said lands to said complainant, and complainant agreed to sell and dispose of the same for said Crow tribe of Indians.

SIXTH: Because said Court erred in refusing to

find that said lands were held by the United States of America in trust for the use and benefit of said Crow tribe of Indians.

SEVENTH: Because the Court erred in holding that complainant's bill of complaint herein states no cause for relief in equity.

EIGHTH: Because the Court erred in holding that, under the pleadings herein, complainant was entitled to no relief in equity as prayed for in the bill of complaint.

NINTH: Because the Court erred in entering a decree dismissing complainant's bill of complaint.

WHEREFORE complainant prays that said decree be reversed and said District Court be directed to enter a decree herein as is prayed for in its bill of complaint.

Dated May 20th, 1914.

BURTON K. WHEELER,
United States Attorney for the District of Montana,
Solicitor for Complainant.

Filed May 20, 1914. Geo. W. Sproule, Clerk.
[29]

Thereafter, on May 20, 1914, a Citation was duly issued herein, which said Citation is hereto annexed and is in the words and figures following, to wit:

[30]

*In the District Court of the United States, District
of Montana.*

UNITED STATES OF AMERICA,

Complainant,

vs.

ASH SHEEP COMPANY, a Corporation,

Defendant.

Citation on Appeal [Original].

United States of America to the Above-named Defendant, Ash Sheep Company, and to C. B. Nolan and William Scallon, Its Solicitors:

You are hereby notified that in a certain cause in equity in the District Court of the United States, in and for the District of Montana, wherein the United States of America is complainant and the said Ash Sheep Company, a corporation, is defendant, an appeal has been allowed the complainant therein to the Circuit Court of Appeal of the United States, in and for the Ninth Circuit. You are hereby cited and admonished to be and appear in said court at the city of San Francisco, in the northern district of California, within said Ninth Circuit, thirty days after the date of this citation, to show cause, if any there be, why the decree appealed from should not be corrected and speedy justice done the parties in that behalf.

WITNESS the Honorable GEO. M. BOURQUIN, Judge of the District Court of the United States, in and for the District of Montana, this 20th day of May, A. D. 1914.

GEO. M. BOURQUIN,
Judge of the District Court of the United States, in
and for the District of Montana. [31]

Service of the within citation on appeal and receipt of a copy thereof this 27th day of May, 1914, is hereby admitted and acknowledged, also copies of appeal and allowance and assignment of errors.

C. B. NOLAN,
WM. SCALLON,
Solicitors for Defendant.

[Endorsed]: No. 11. United States District Court, District of Montana. United States of America, Complainant, vs. Ash Sheep Company, a Corporation, Defendant. Citation on Appeal. Filed May 29, 1914. Geo. W. Sproule, Clerk. By Harry H. Walker, Deputy. [32]

Thereafter, on June 8, 1914, a Praecipe for Transcript was duly filed herein, in the words and figures following, to wit: [33]

In the District Court of the United States, District of Montana.

UNITED STATES OF AMERICA,
Complainant and Appellant,
vs.

ASH SHEEP COMPANY, a Corporation,
Defendant and Respondent.

Praeceptum [for Transcript of Record].

To Messrs. C. B. Nolan and William Scallon, Solicitors for the Defendant and Respondent Above Named, and George W. Sproule, Clerk of Said Court:

You, and each of you, will please take notice, that the undersigned, the solicitor for the plaintiff and appellant above named, hereby serves upon you and each of you this praecipe, in conformity with the rules of court, to indicate to you the portions of the records and files in the above-entitled cause in said court which said complainant and appellant desires to and will incorporate in its transcript on the appeal herein heretofore, to wit, on the 20th day of May, 1914, taken from the judgment and decree heretofore entered in the above-entitled court to the Circuit Court of the United States in and for the Ninth Circuit, and the clerk of said court will incorporate and include in said transcript on appeal the following papers:

1. The judgment-roll or final record in said cause, consisting of the bill of complaint, subpoena, answer, decree, and certificate of clerk;
2. The memorandum decision of the Court and complete decision of the Court rendered and filed herein on the 19th day of August, 1913;
3. Order of Court made and entered in said cause on the 16th day of December, 1913, ordering a decree in favor of said defendant and dismissing complainant's bill of complaint;

4. Appeal taken and allowed herein on the 20th day [34] of May, 1914;

5. Assignment of errors filed with said appeal on the said 20th day of May, 1914;

6. Citation on appeal together with acknowledgment of service thereof by the solicitors for said defendant and respondent.

7. This praecipe for the papers and files to be included in said transcript on appeal.

BURTON K. WHEELER,
United States Attorney for the District of Montana,
Solicitor for Complainant.

Service of the foregoing praecipe and receipt of a copy thereof this 6th day of June, 1914, is hereby admitted and acknowledged.

C. B. NOLAN,
WM. SCALLON,
Solicitors for Defendant and Respondent.

Filed June 8, 1914. Geo. W. Sproule, Clerk.
[35]

Clerk's Certificate to Transcript of Record.

United States of America,
District of Montana,—ss.

I, Geo. W. Sproule, Clerk of the United States District Court for the District of Montana, do hereby certify and return to the Honorable, the United States Circuit Court of Appeals for the Ninth Circuit, that the foregoing volume, consisting of 36 pages, numbered consecutively from 1 to 36, inclusive, is a true and correct transcript of the pleadings,

process, orders and decree and all other proceedings had in said cause, and of the whole thereof, as appears from the original records and files of said court in my possession as such Clerk; and I do further certify and return that I have annexed to said transcript and included within said paging the original citation issued in said cause.

I further certify that the costs of the transcript of record amount to the sum of Six 15/100 Dollars (\$6.15) and have been made a charge against appellant.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said Court at Helena, Montana, this 9th day of June, A. D. 1914.

[Seal]

GEO. W. SPROULE,
Clerk. [36]

[Endorsed]: No. 2434. United States Circuit Court of Appeals for the Ninth Circuit. United States of America, Appellant, vs. Ash Sheep Company, a Corporation, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the District of Montana.

Received and filed June 15, 1914.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Meredith Sawyer,
Deputy Clerk. . .

